Dismissed. 15-682
Recalled Judge Davis
Writ of
Error &
& Not
April 9

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

Certf

No. ~~1470~~ 210

JOHN C. BURROUGHS, APPELLANT,

vs.

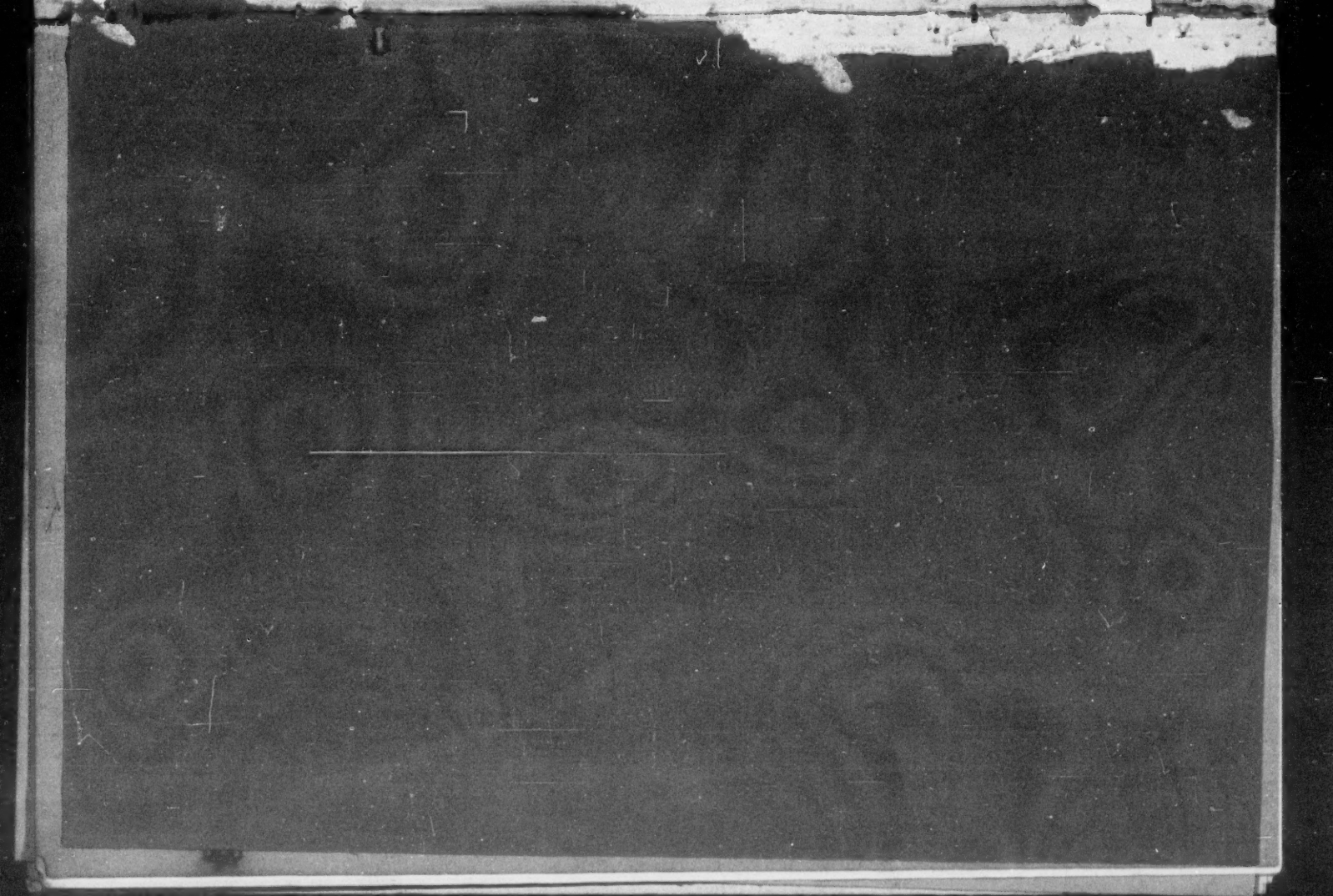
SAMUEL T. CARROW, MARSHAL, ETC.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NORTH CAROLINA.

FILED DECEMBER 1, 1871.

Dec. 9. 1871

Proceedings at Law
brought here by
appeal



SUPREME COURT OF THE UNITED STATES.

No. 447.

JOHN C. BURROUGHS, APPELLANT,

vs.

SAMUEL T. CARROW, MARSHAL, ETC.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NORTH CAROLINA.

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1 UNITED STATES OF AMERICA,
District of North Carolina:

Circuit court, fourth district.

Be it remembered that, at a circuit court of the United States begun and held for the district of North Carolina, in the city of Raleigh, on the last Monday of November, it being the 28th day of said month, in the year of our Lord one thousand eight hundred and seventy, John C. Burroughs, by his attorney, H. W. Guion, esquire, returns into court, before the Hon. Hugh L. Bond and the Hon. George W. Brooks, circuit and district judges of the United States for the fourth circuit and district aforesaid, his petition and rule against Samuel T. Carrow, marshal of the United States for the district of North Carolina; which said petition and rule are in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States within and for the district of North Carolina:

The humble petition of John C. Burroughs, of the city of Charlotte, county of Mecklenburg, respectfully shews that two several judgments were rendered at the November term, 1869, of the said circuit court, at Raleigh, against A. A. N. M. Taylor, of said city of Charlotte, one in favor of Couglan, Randall & Co., & the other in favor of James Forsythe, the amounts of which are unknown to your petitioner; that fi. fa's were issued thereon, & came to the hands of Ed. Byron Fullings, of Mecklenburg County, as the deputy marshal of said court; that said deputy marshal had levied the said fi. fa's on the interest of said Taylor
2 in a lot in said city of Charlotte, bounded as follows: "Beginning on Church street, 29½ feet from Gough & Hammond's line, at G. W. Caldwell's stone corner, now Yates's corner, and runs south 37¾° east, 530 feet, with said Yates's line to a stone, (Yates' corner, near the public road;) thence north 43½° east, 232 feet, with the great road to a stake or stone, or General Hill's corner; thence N. 41° W., 512 feet, to a stone on Church street, & thence to the beginning;" that, after duly advertising said property according to law, the same was exposed to sale, and your petitioner became the purchaser thereof, being the highest bidder, at the sum of one hundred and ten dollars.

Petitioner further shews that he paid the amount of the bid to the deputy marshal, and took his receipt therefor, as follows:

"$110.00. Received of John C. Burroughs one hundred & ten dollars as purchase-money for the residence of A. A. N. M. Taylor, including right of dower & homestead, situated in the city of Charlotte, N. C., this day sold by me, by public auction, as the property of A. A. N. M. Taylor, to satisfy executions in my hands issued from the U. S. circuit court.

"This receipt to hold & remain in force until the execution & delivery of a deed for said property.

"Charlotte, N. C., May 10th, 1870.

(Signed) "ED. BYRON FULLINGS,
"*U. S. Deputy Marshal.*

"Witness: TH. W. DEWEY."

That, at the ensuing June term, petitioner, through his attorney & counsel, applied to the principal marshal, S. T. Carrow, to make
3 a deed for the interest so purchased & paid for as aforesaid, when the said marshal absolutely refused to do so, alleging that some

fraud, not stating what or by whom, had been perpetrated upon him; that thereupon said attorney & counsel applied for a rule upon said marshal to shew cause why he should not be compelled to make said deed according to law, and by the rules of said circuit court; that, before the necessary affidavits could be prepared and filed, the said court adjourned. Since the adjournment petitioner has caused to be prepared & tendered to said Carrow, for execution, a proper deed for the interest so purchased by petitioner; and he refused, and still refuses, to execute the same; that notice has been given to him that application will be made at the next term of the court for a rule & order to compel him to discharge his duty in this behalf.

Your petitioner further shews to your honors that, within the last few days, he has found an advertisement posted on the court-house door, in Charlotte, announcing that the said marshal, by virtue of the executions issued in the same cases, will sell the interest of said A. A. N. M. Taylor in the property so sold heretofore in May last to your petitioner; and said sale is fixed for the 26th day of the present month.

And further shews that if he is permitted so to sell the same estate a second time, and shall make a deed for the premises to any third party before executing a deed to your petitioner, that will work a
4 serious injury to your petitioner, and lead to long and expensive litigation; that such an exercise of power is incompatible with his duty as marshal, and a manifest abuse of the process of the court.

Your petitioner further shews that, prior to the sale of the marshal in May last, by virtue of sundry executions issued by the superior court of Mecklenburg County to the sheriff of Mecklenburg, many of which were older in teste, prior in lien and levy, to the executions in the marshal's hands, the estate of said Taylor in the lot aforesaid was sold according to law, and at a high price, viz, $5,500.00. Your petitioner became the purchaser thereof, paid the amount of his bid, and took the sheriff's deed therefor; that subsequently the marshal's sale took place, at which petitioner, under the advice of counsel, made the last & highest bid as aforesaid, solely with the view of perfecting his title acquired from the sheriff as aforesaid; that the present action of the marshal in withholding a deed, &, at the same time, offering the land for sale again, is in bad faith, & subjects the petitioner to liabilities & complications inconsistent with the usages of law and the rules & proceedings of courts of justice.

To the end, therefore, that petitioner may be relieved, he prays your honor for a rule upon the marshal, S. T. Carrow, to shew cause at the next term of the circuit court, to be holden at Raleigh, to shew cause why he shall not make a good and sufficient deed in fee-simple to your petitioner for the lot aforesaid; and that, in the meantime, the
5 said S. T. Carrow & his deputies, by an order of the court, shall stay all further proceedings under the said executions now in his hands, so far as the same relate to a resale of the lot hereinbefore described. And for further and other relief, &c.

(Signed) H. W. GUION,
For Petitioner.

NORTH CAROLINA,
Mecklenburg County, ss:

John C. Burroughs, before me, F. W. Ahrens, commissioner of the circuit court of the United States, makes oath that the several matters of fact set forth in the foregoing petition, as of his own knowledge, are true, & those otherwise stated he believes to be true.

(Signed) J. C. BURROUGHS.

Sworn to before me, at Charlotte, N. C., this 1st day of November, 1870.

(Signed) F. W. AHRENS,
U. S. Commissioner.

In the circuit court of the U. States for the dist. of N. Carolina, at chambers, at Eliz. City, on the 14th day of Nov'r, 1870.

The petition of J. C. Burroughs, filed in this cause, being read, with the affidavit filed therewith, & same being considered, a rule is granted by the court against Samuel T. Carrow, marshal, to shew cause why he has not executed a proper deed to said petitioner, J. C. Burroughs, for the property described in the petition.

Ordered that a copy of this rule be issued by the clerk, to be served upon the said Carrow, returnable before said circuit court, at Raleigh, on the 14th day of December, 1870.

(Signed) G. W. BROOKS, *Dist. Judge.*

6 A copy of the foregoing rule issued and delivered to S. T. Carrow, marshal, Dec. 8, 1870.

(Signed) N. J. RIDDICK, *Clerk.*

At the same time, to wit, November term, 1870, the plaintiff files as evidence in the cause, a receipt of Ed. Byron Fullings, and an affidavit of T. W. Dewey, which are in the following words:

"$110.00. Received of John C. Burroughs, one hundred and ten dollars as purchase-money for the residence of A. A. N. M. Taylor, including right of dower & homestead, situated in the city of Charlotte, N. C., this day sold by me, by public auction, as the property of A. A. N. M. Taylor, to satisfy executions in my hands, issued from the U. S. circuit court.

"This receipt to hold and remain in force until the execution and delivery of a deed for said property.

"Charlotte, N. C., May 10th, 1870.

"ED. BYRON FULLINGS,
"*U. S. Deputy Marshal.*

"Witness: THO. W. DEWEY."

In the circuit court of the United States, district of North Carolina.

JOHN C. BURROUGHS
vs.
SAMUEL T. CARROW. } Rule.

Thomas W. Dewey maketh oath that he knows that Ed. Byron Fullings, at the date of the annexed paper, was acting in the capacity of deputy marshal, and, as such, received & executed process from the Federal courts, in some of which affiant was interested. He
7 also swears that the annexed receipt, signed by "Ed. Byron Fullings, U. S. deputy marshal," for $110, paid to him by John C. Burroughs, was signed in my presence & was attested by me at the request of the parties.

(Signed) THO. W. DEWEY.

Sworn to and subscribed before me this 10th day of Dec'b'r, A. D. 1870.

(Signed) F. W. AHRENS, *U. S. Commissioner.*

And at the same time, the defendant, Samuel T. Carrow, by his attorneys, Messrs. Phillips & Merrimon and J. M. McCorkle, esquires, files his answer to the said rule, and exhibits in support thereof, certain executions and writs of venditioni exponas in favor of Coughlan, Randall & Co. against A. A. N. M. Taylor and Joseph Duncan, and one in favor of James Forsythe vs. A. A. N. M. Taylor; which said answer and evidence are in the following words and figures, to wit:

In the circuit court of the United States for the district of North Carolina, 4th circuit, November term, 1870.

Samuel T. Carrow, marshal, by way of answer to the rule obtained against him by J. C. Burroughs, to show cause why he has not executed a proper deed to said petitioner, J. C. Burroughs, for the property described in his petition, answering, says, that it is true that Coughlan, Randall & Co. and James Forsythe obtained judgments against
8 one A. A. N. M. Taylor, at November term, 1869, of this honorable court; that fi. fa.'s thereon were issued to him and placed by him into the hands of a deputy, one E. B. Fullings, to be executed; that it appears by the returns to the said fi. fa.'s on file, and to which, for greater certainty, reference is hereby made, and copies of which are herewith exhibited as part of this return, marked (A) and (B,) that the same were levied on a tract of land situate on Tryon street, in Charlotte, containing four acres, more or less, and that the said deputy marshal exposed said lot of land for sale, when the said A. A. N. M. Taylor came forward and forbid the sale of his homestead as laid off by the sheriff, (in said tract of land,) declaring substantially, that the decision of the Hon. George W. Brooks was considered by some of the most eminent lawyers in the State incorrect, and that the same would be reversed by the Supreme Court of the United States, and that if any one purchased his homestead, they would buy a lawsuit, as he should carry the question of the validity of such sale to the Supreme Court, and likewise produced and read to the crowd section 1st under the head of "Final process," in the rules of this court, on page 27, and that thereupon one M. L. Wriston came forward and forbid the sale of that portion of said tract not embraced by the said homestead.

That, thereupon, said tract was cried, when one S. B. Meacham bid the highest sum for the same, to wit, $110.

That your respondent is informed and believes that said
9 tract, situate in the growing city of Charlotte, on the main street, is worth fifteen thousand dollars, and has lately been sold for that or about that sum, by said Taylor & others, claiming interest under a sheriff's sale.

That it was evident to respondent from the facts stated to him by his deputy, that the petitioner, Meacham, Taylor, Bryce, Wriston, and McLaughlin, had combined to stifle competition at said sale, and that the whole programme enacted as set forth in said return was the result of such combination; that the said sale was unfair, as the conduct of these bidders, several of them being men of wealth and influence, was calculated, and in the judgment of himself, as well as said deputy, had the effect to prevent the property not only from bringing anything like a fair price, but to cause it to be knocked down at the most enormous sacrifice; that, in view of these facts, his said deputy made return of the facts, and thereupon I made the return of no sale.

That, thereupon, writs of venditioni exponas were duly issued to

me, based upon said judgments, levies, and returns, and after due advertisement at four public places in Mecklenburgh County, for forty days, I exposed the said tract to sale on the 26th day of November, 1870, at the court-house door in Charlotte, when and where James Henderson became the last and highest bidder for the same; this I learn from the return of my deputy J. T. Cuthrell; that he paid me the purchase-money, and I executed to him a deed therefor be-
10 fore this rule was served on me or notice of the proceeding had.

That the several sums bid at the sale of my deputy, E. B. Fullings, are now held by me, as stated in my returns, to be delivered to the rightful owners thereof on demand, and are now, & always have been, ready to pay over the same to the parties entitled thereto.

(Signed) S. T. CARROW.

S. T. Carrow, being duly sworn, declares he has no personal knowledge of the facts herein set forth, but that from information & belief he is satisfied that the facts stated in the foregoing answer are true.

(Signed) S. T. CARROW.

Sworn & subscribed before me this Dec. 16th, 1870.

N. J. RIDDICK, *Clerk.*

UNITED STATES OF AMERICA,
District of North Carolina:

Circuit court, fourth circuit.

The President of the United States of America to the marshal of North Carolina district, greeting:

You are hereby commanded that, of the goods and chattels, lands and tenements of A. A. N. M. Taylor and Joseph Duncan, in your district, you cause to be made the sum of two thousand six hundred and forty-eight $\frac{25}{100}$ dollars, with interest on twenty-two
11 hundred and eighty-one $\frac{82}{100}$ dollars, from the 29th day of Nov., A. D. 1869, which lately in the circuit court of the United States, held for the district of North Carolina, in Raleigh, was awarded to Thomas W. Coughlan, Lorenzo Randall, Samuel H. Randall, & George C. White, trading under the firm of "Coughlan, Randall & Co.," for damages which they sustained by reason of the non-performance of certain promises, made by the said defendants to the said plaintiffs, and also the further sum of forty-five $\frac{40}{100}$ dollars, which was awarded to the said plaintiffs for their costs and charges in the said suit expended, besides your fees for this service, whereof the said defendants are convicted, as appears to us of record. And have you the said moneys before the judges of our said court, in Raleigh, on the first Monday of June next, to render to the said plaintiffs their damages and costs aforesaid.

And have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the last Monday in November, 1869, and in the 94th year of the independence of the United States.

Issued the 4th day of January, 1870.

[SEAL.] (Signed) N. J. RIDDICK, *Clerk.*

To hand Jan'y 8th, 1870. Executed by levying on the following prop-

erty belonging to defendant A. A. N. M. Taylor, to wit: One tract
12 of land situated on Tryon st., in the city of Charlotte, Mecklenburg Co., N. C., containing 4 acres, more or less, adjoining lands of W. J. Yates and D. H. Hill, upon which is located a large dwelling-house, kitchen, and out-buildings, known as the home place of said defendant; one other tract of land containing 70 acres, more or less, adjoining lands of M. L. Wriston, Mrs. H. B. Williams, and others; also, one tract of land containing 400 acres, more or less, adjoining same lands and those of Richard Turner, and known as the Osborne Hannon tract; and one other tract of land containing 64 acres, more or less, known as the Walker tract, adjoining lands of Icehour, Griffith, and others. All of which lands are situated in the county of Mecklenburg, N. C., on the main Camden road about 1¼, 2½, and 4 miles from Charlotte, respectively. Levied this 16th day of February, 1870, together with the following personal property belonging to said A. A. N. M. Taylor, to wit, two mules, four head of cattle, double set of harness, wagon, grindstone, two beds & bedding, wardrobe, p'r andirons, shovel & tongs, clock, 19 chairs, lounge & cover, bureau, 3 tables, wash-stand, bowl & pitcher, crockery, 2 stoves, & fixtures, hat-rack, and sofa.

Levied this 9th day of April, 1870.

Real estate advertised to be sold at the court-house door of said county, on the 10th day of May, 1870. The personal property advertised to be sold at said A. A. N. M. Taylor's residence, the 24th day of May, 1870.

(Signed) S. T. CARROW, *U. S. Marshal.*
By ED. BYRON FULLINGS,
Deputy U. S. Marshal.

13 I further return, that after said levy and prior to the day of sale, as advertised by me, the sheriff of Mecklenburg County sold the several tracts of land aforesaid, to wit: On the 7th day of May, 1870, under and by virtue of sundry executions in his hands, issued from the State court, some of which executions were of lien prior to the teste of this fi. fa., and others of a lien subsequent thereto; that said sheriff, before selling the first described tract, caused to be laid off and allotted to the defendant a homestead therein, pursuant to State laws; that at said sheriff's sale the first-described tract was bid off by one M. L. Wriston, for the use and benefit of one John C. Burroughs, a brother-in-law of the defendant, at the price of $5,500; the 70-acre tract was bid off by said Wriston, at the price of $3,200; the 400-acre tract was bid off by one J. Y. Bryce, at the price of $2,200; and the 64-acre tract was bid off by Joseph McLaughlin, at the price of $275. That on the day of sale, as advertised by me, I first put up for sale the house and lot first described, when the defendant Taylor came forward and forbid the sale of his homestead, as laid off by the sheriff, declaring substantially that the decision of the Hon. George W. Brooks, district judge, was considered by some of the most eminent lawyers in the State incorrect, and that the same would be reversed by the Supreme Court of the United States, and that if any one purchased his homestead they would buy a law-suit, as he should carry the question
14 of the validity of such sale to the Supreme Court, and likewise produced and read to the crowd, section 1, under the head of "final process," in the rules of this court, page 27; that thereupon the said M. L. Wriston came forward and forbid the sale of any portion of said tract not embraced by the homestead; that thereupon the said

tract was cried, when one S. B. Meacham became the last and highest bidder at the price of $110, the homestead being valued by appraisers at one thousand dollars, and really worth double that sum; that said Meacham bid as agent for said Burroughs; that thereupon I offered for sale the 70-acre tract, when M. L. Wriston came forward and forbid the sale; that as the defendant Taylor is a married man, it was understood that the sheriff's sale would not pass the dower interest of his wife; that thereupon one Joseph Graham, as agent for said Wriston, became the last and highest bidder at the price of one dollar; that thereupon I offered the 400-acre tract for sale, when the said J. Y. Bryce came forward and forbid the sale thereof, but the same was cried by me, when the said Bryce became the last and highest bidder at the price of $175; that thereupon I offered the 64-acre tract for sale, when the said Joseph McLaughlin came forward and forbid the sale thereof, but the same was cried by me, when the said McLaughlin became the last and highest bidder at the price of $31; that the interest of the defendant in the 70-acre tract not sold by the sheriff, was worth, according to my estimate, $500; that the 400-acre tract was worth, subject to a lien of $900, at least $3,500, and that the 64-acre tract was worth
15 $500. That the proceeds of the sales of personal property and the first and second above-described tracts by said sheriff was more than sufficient to satisfy all the executions in his hands of lien prior to the 29th of November, 1869, and the sales thereof were made anterior to his pretended sales of the 400 and 64 acre tracts; that the action of the defendant M. L. Wriston, S. B. Meacham, John C. Burroughs, J. Y. Bryce, and Joseph McLaughlin, as aforesaid, did prevent competition and suppress bidding; that said Wriston and Bryce are men of wealth and influence.

I further return that I received the sums bid, and now hold the same for the parties rightfully entitled thereto.

I sold the personal property levied on, which brought $281.50, retained my fees and commissions, $14.93; also $7.40 to settle with late Marshal Goodloe. Paid into office for costs $38.14, and $95.87 in part of debt and interest. The balance of the $281.50 being applied to the execution in favor of James Forsythe, of the same teste as this.

And on the foregoing facts, I return no sale of the several tracts of land levied on.

(Signed) S. T. CARROW, *U. S. Marshal.*
By ED. BYRON FULLINGS,
Deputy U. S. Marshal.

EXHIBIT "B."

UNITED STATES OF AMERICA,
District of North Carolina:

County court, fourth circuit.

The President of the United States of America to the marshal of the North Carolina district, greeting:

16 You are hereby commanded that, of the goods and chattels, lands and tenements of A. A. N. M. Taylor, in your district, you cause to be made as well a certain debt of twelve hundred and seventy-five dollars with interest thereon from the 29th day of November, 1860, which James Forsythe, lately in the circuit court of the United States,

held for the district of North Carolina, in Raleigh, recovered against him, as also six hundred and thirty-seven $\frac{50}{100}$ dollars, which in our said court were awarded to the said plaintiff for his damages, which he sustained by reason of detaining the said debt, and the further sum of forty-one $\frac{25}{100}$ dollars for his costs and charges in the said suit expended, besides your fees for this service, whereof the said defendant is convicted as appears of record. And have you the said moneys before the judges of our said court in Raleigh, on the first Monday of June next, to render to the said plaintiff his debt, damages, and costs aforesaid. And have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district the last Monday in November, 1869, and in the 94th year of the independence of the United States.

Issued the 6th day of January, 1870.

[L. S.] (Signed) N. J. RIDDICK, *Clerk.*

To hand, January 24th, 1870. Executed by levying on the following property belonging to defendant, A. A. N. M. Taylor, to wit: One
17 tract of land situated on Tryon st., in the city of Charlotte, Mecklenburg Co., N. C., containing 4 acres, more or less, adjoining lands of W. J. Yates, and D. H. Hill, upon which is located a large dwelling-house, kitchen, and out-buildings, known as "the home place" of said defendant. One other tract of land containing 70 acres, more or less, adjoining lands of M. L. Wriston, Mrs. H. B. Williams and others. Also, one tract of land containing 400 acres, more or less, adjoining same lands and those of Richard Turner, and known as "the Osborne Hannon tract." And one other tract of land containing 64 acres, more or less, known as the "Walker tract," adjoining lands of "Icehour," Griffith, and others. All of which lands are situated in the county of Mecklenburg, N. C., on the main "Camden road," about $1\frac{1}{4}$, $2\frac{1}{4}$, and 4 miles from Charlotte, respectively.

Levied this 16th day of February, 1870, together with the following personal property belonging to said A. A. N. M. Taylor, to wit: Two mules, four head of cattle, double set of harness, wagon, grindstone, two beds and bedding, wardrobe, p'r andirons, shovel & tongs, clock, 19 chairs, lounge and cover, bureau, 3 tables, crockery, 2 stoves & fixings, hat-rack, wash-stand, bowl and pitcher, and sofa.

Levied this 9th day of April, 1870. Real estate advertised to be sold at the court-house door of said county, on the 10th day of May, 1870. The personal property advertised to be sold at said A. A. N. M. Taylor's residence, the 24th day of May, 1870.

(Signed) S. T. CARROW, *U. S. Marshal.*
By ED. BYRON FULLINGS,
Deputy U. S. Marshal.

18 I further return that, after said levy and prior to the day of sale as advertised by me, the sheriff of Mecklenburg County sold the several tracts of land aforesaid, to wit: On the 7th day of May, 1870, under and by virtue of sundry executions in his hands, issued from the State court, some of which executions were of lien prior to the teste of this "fi. fa." and others of a lien subsequent thereto; that said sheriff, before selling the first-described tract, caused to be laid off and allotted to the defendant a homestead therein, pursuant to State laws; that at said sheriff's sale the first-described tract was bid off by one M. L. Wriston, for the use and benefit of one John C. Burroughs, a brother-in-law of the defendant, at the price of $5,500. The 70-acre tract was

bid off by said Wriston at the price of $3,200; the 400-acre tract was bid off by one J. Z. Bryce, at the price of $2,200; and the 64-acre tract was bid off by Joseph McLoughlin, at the price of $275. That on the day of sale, as advertised by me, I first put up for sale the house and lot first described, when the defendant Taylor came forward and forbid the sale of his homestead as laid off by the sheriff, declaring substantially that the decision of the Hon. George W. Brooks, district judge, was considered by some of the most eminent lawyers in the State incorrect, and that the same would be reversed by the Supreme Court of the United States, and that if any one purchased his homestead, they would buy a law-suit, as he should carry the question of the
19 validity of such sale to the Supreme Court, and likewise produced and read to the crowd section 1, under the head of "Final process," in the rules of this court, page 27.

That thereupon the said M. L. Wriston came forward and forbid the sale of any portion of said tract, not embraced by the homestead. That thereupon the said tract was cried, when one S. B. Meacham became the last and highest bidder, at the price of $110. The homestead being valued by appraisers at one thousand dollars, and really worth double that sum. That said Meacham bid as agent for said Burroughs. That thereupon I offered for sale the 70-acre tract, when M. L. Wriston came forward and forbid the sale. That as the defendant Taylor is a married man, it was understood that the sheriff's sale would not pass the dower interest of his wife.

That thereupon one Joseph Graham, as agent for said Wriston, become the last and highest bidder at the price of one dollar.

That thereupon I offered the 400-acre tract for sale, when the said J. Y. Bryce came forward and forbid the sale thereof, but the same was cried by me, when the said Bryce became the last and highest bidder at the price of $175. That thereupon I offerred the 64-acre tract for sale, when the said Joseph McLaughlin came forward and forbid the sale thereof, but the same was cried by me, when the said McLaughlin became the last and highest bidder, at the price of $31.

That the interest of the defendant in the 70-acre tract, not sold by the sheriff, was worth, according to my estimate, $500.

That the 400-acre tract was worth, subject to a lien of $900, at
20 least $3,500, and that the 64-acre tract was worth $500.

That the proceeds of the sales of personal property, and the first and second above-described tracts, by said sheriff was more than sufficient to satisfy all the executions in his hands of liens prior to 29th of November, 1869, and the sales thereof were made anterior to his pretended sales of the 400 and 64 acre tracts. That the action of the defendant M. L. Wriston, S. B. Meacham, John C. Burroughs, J. Y. Bryce and Joseph McLaughlin, as aforesaid, did prevent competition, and suppress bidding. That said Wriston and Bryce are men of wealth and influence.

I further return that I received the sums bid, and now hold the same for the parties rightfully entitled thereto.

I sold the personal property levied on, which brought $281.50. Retained my fees and commission, $13.70. Paid into office for costs, $42.54, and $68.84 in part of debt and interest. The balance of the 281.50 being applied to the execution in favor of Coughlan, Randall & Co., of the same teste as this. And on the foregoing facts I return no sale of the several tracts levied on.

(Signed) S. T. CARROW, *U. S. Marshal.*
By ED. BYRON FULLINGS,
Deputy U. S. Marshal.

UNITED STATES OF AMERICA,
District of North Carolina:

Circuit court, fourth circuit.

The President of the United States of America, to the marshal of
21 North Carolina district, greeting:

Whereas by our writ we lately commanded you that, of the goods and chattels, lands and tenements of A. A. N. M. Taylor and Joseph Duncan, (in your district,) you should cause to be made the sum of two thousand six hundred and forty eight $\frac{25}{100}$ dollars, with interest on two thousand two hundred and eighty-one $\frac{82}{100}$ dollars from the 29th day of November, 1869, which, lately in the circuit court of the United States held for the district of North Carolina, in Raleigh, was awarded to Thomas W. Coughlan, Lorenzo Randall, Samuel H. Randall, & George C. White, trading under the firm of "Coughlan, Randall & Co.," for damages which they sustained by reason of the non-performance of certain promises made by the said defendants to the said plaintiffs, and costs of suit, which were taxed by the clerk at the sum of forty-five $\frac{40}{100}$ dollars, (besides your fees for that service,) whereof the said defendants are convicted, as appears to us of record; that you should have the said money before the judges of our said court at Raleigh on the first Monday of June, A. D. 1870, then and there to render the same, &c.: and you at that day returned that, by virtue of said writ, you had "executed by levying on the following property belonging to defendant A. A. N. M. Taylor, to wit: One tract of land, situated on Tryon st., in the city of Charlotte, Mecklenburg Co., N. C., containing 4 acres, more or less, adjoining lands of W. J. Yates and D. H. Hill, upon which is located a large dwelling-house, kitchen, and out-buildings, known as 'the home place' of said defendant; one other tract of land,
22 containing 70 acres, more or less, adjoining lands of M. L. Wriston, Mrs. H. B. Williams, and others; also, one tract of land, containing 400 acres, more or less, adjoining same lands and those of Richard Turner, and known as the 'Osborne Hannon tract;' and one other tract of land, containing 64 acres, more or less, known as 'the Walker tract,' adjoining lands of Icehour, Griffith, and others. All of which lands are situated in the county of Mecklenburg, N. C., on the main 'Camden road' about 1¼, 2¼, and 4 miles from Charlotte, respectively. "Levied this 16th day of February, 1870, together with the following personal property belonging to said A. A. N. M. Taylor, to wit: Two mules, four head of cattle, double set of harness, wagon, grindstone, two beds & bedding, wardrobe, p'r andirons, shovel and tongs, clock, 19 chairs, lounge & cover, bureau, 3 tables, crockery, 2 stoves and fixtures, hat-rack, wash-stand, bowl and pitcher, and sofa." "Levied this 9th day of April, 1870, real estate advertised to be sold at the court-house door of said county, on the 10th day of May, 1870." "The personal property advertised to be sold at said A. A. N. M. Taylor's residence, the 24th day of May, 1870.

(Signed) "S. T. CARROW, *U. S. Marshal.*
"By ED. BYRON FULLINGS,
"*Deputy U. S. Marshal.*

"I further return that, after said levy and prior to the day of sale, as advertised by me, the sheriff of Mecklenburg County sold the several tracts of land aforesaid, to wit, on the 7th day of May, 1870, under and by virtue of sundry executions in his hands, issued from the
23 State court, some of which executions were of lien prior to the

teste of this fi. fa., and others of a lien subsequent thereto That said sheriff, before selling the first-described tract, caused to be laid off and allotted to the defendant a homestead therein, pursuant to State laws. That at said sheriff's sale, the first-described tract was bid off by one M. L. Wriston, for the use and benefit of one John C. Burroughs, a brother-in-law of the defendant, at the price of $5,500; the 70-acre tract was bid off by said Wriston, at the price of $3,200, ($3,200.00.) The 400-acre tract was bid off by one J. Y. Bryce, at the price of $2,200; and the 64-acre tract was bid off by Joseph McLaughlin, at the price of $275; that, on the day of sale, as advertised by me, I first put up for sale the house and lot first described, when the defendant Taylor came forward and forbid the sale of his homestead as laid off by the sheriff, declaring substantially that this decision of the Hon. George W. Brooks, district judge, was considered by some of the most eminent lawyers in the State incorrect, and that the same would be reversed by the Supreme Court of the United States, and that if any one purchased his homestead they would buy a law-suit, as he should carry the question of the validity of such sale to the Supreme Court; and likewise produced and read to the crowd, section 1, under the head of 'Final p'ocess' in the rules of this court, page 27. That, thereupon, the said M. L. Wriston came forward and forbid the sale of any portion of said tract not embraced by the homestead. That, thereupon, the said
24 tract was cried, when one S. B. Meacham became the last and highest bidder at the price of $110, the homestead being valued by appraisers at one thousand dollars, and really worth double that sum. That said Meacham bid as agent for said Burroughs; that, thereupon, I offered for sale the 70-acre tract, when M. L. Wriston came forward and forbid the sale. That, as the defendant Taylor is a married man, it was understood that the sheriff's sale would not pass the dower interest of his wife. That, thereupon, one Joseph Graham, as agent for said Wriston, became the last and highest bidder at the price of one dollar. That, thereupon, I offered the 400-acre tract for sale, when the said J. Y. Bryce came forward and forbid the sale thereof; but the same was cried by me, when the said Bryce became the last and highest bidder, at the price of $175. That, thereupon, I offered the 64-acre tract for sale, when the said Joseph McLaughlin came forward and forbid the sale thereof; but the same was cried by me, when the said McLaughlin became the last and highest bidder, at the price of $31. That the interest of the defendant in the 70-acre tract not sold by the sheriff, was worth, according to my estimate, $500. That the 400-acre tract was worth, subject to a lien of $900, at least $3,500. And that the 64-acre tract was worth $500. That the proceeds of the sales of personal property and the first and second above-described tracts by said sheriff was more than sufficient to satisfy all the executions in his
25 hands, of liens prior to 29th of November, 1869; and the sales thereof were made anterior to his pretended sales of the 400 and 64 acre tracts. That the action of the defendant M. L. Wriston, S. B. Meacham, John C. Burroughs, J. Y. Bryce, and Joseph McLaughlin, as aforesaid, did prevent competition and suppress bidding. That said Wriston and Bryce are men of wealth and influence.

"I further return that I received the sums bid, and now hold the same for the parties rightfully entitled thereto.

"I sold the personal property levied on, which brought $281.50. Retained my fees and commissions, $14.93; also $7.40 to settle with late Marshal Goodloe. Paid into office for costs, $38.14, and $95.87, in part of debt and interest, the balance of the $281.50 being applied to the execution in favor of James Forsythe, of the same teste as this.

"And on the foregoing facts I return no sale of the several tracts of land levied on.

(Signed) "S. T. CARROW, *U. S. Marshal.*
"By ED. BYRON FULLINGS,
"*Deputy U. S. Marshal.*"

And it appearing that the said real property remains unsold, therefore we command you that you expose to public sale to the highest bidder, for cash, and sell or cause to be sold the real property aforesaid, and have you the money arising from the sale before the judges of our said court, at Raleigh, on the last Monday of November next,
26 then and to render the same to the said plaintiffs, and also the further sum of five dollars, costs taxed since the issuing of the said execution, besides your fees for this service.

And if the property aforesaid shall not be sufficient to satisfy the said recovery, we then command you, as we have heretofore commanded you, that of the goods and chattels, lands and tenements, of the said A. A. N. M. Taylor and Joseph Duncan, in your district, you cause to be made the residue thereof; and have you likewise that money before the judges of our said court, on the day and at the place aforesaid, then and there to render the same, &c. And have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the first Monday in June, 1870, and in the ninety-fourth year of the Independence of the United States.

Issued the 17th day of October, 1870.

[L. S.] (Signed) N. J. RIDDICK, *Clerk.*

To hand, Oct. 17th, 1870. By virtue of the command of the within writ, and one in favor of James Forsythe, I exposed to sale at the courthouse, in the town of Charlotte, in Mecklenburg County, in North Carolina, the real estate levied on and specified in the within-recited levy, on the 26th day of November, A. D. 1870. after advertisement in
27 four public places in said county of Mecklenburg, when and where James Henderson became the last and highest bidder of all of said real estate, (of the lot first described, at the sum of two hundred and ten dollars; of the second-described piece and tract, at the sum of ten dollars; of the tract thirdly described, at the sum of one hundred and sixty dollars; and of the tract fourthly described, at the sum of ten dollars,) amounting in the aggregate to the sum of three hundred and ninety dollars, which has been paid. Retained my fees and ½ commissions, $18.12, and paid to office for costs, $5, and $199.61 being the proportionate part of the balance due ($343.76) on this venditioni exponas, the remainder of the amount of bids being applied to the venditioni exponas in favor of James Forsythe, then in my hands and being of the same teste and lien as this, as per my return thereon.

(Signed) S. T. CARROW, *U. S. Marshal.*
By J. T. CUTHRELL, *Deputy.*

UNITED STATES OF AMERICA,
District of North Carolina:

Circuit court, fourth circuit.

The President of the United States of America to the marshal of North Carolina district, greeting:

Whereas by our writ we lately commanded you that, of the goods

and chattels, lands and tenements of A. A. N. M. Taylor, in your district, you cause to be made, as well as certain debt of twelve
28 hundred and seventy-five dollars, with interest thereon from the 29th day of November, 1869, which James Forsythe lately, in the circuit court of the United States for the district of North Carolina, in Raleigh, recovered against him; as also six hundred and thirty-seven $\frac{50}{100}$ dollars, which in our said court were awarded to the said plaintiff for damages which he sustained by reason of the detention of said debt, and costs of suit which were taxed by the clerk, at the sum of forty-one $\frac{25}{100}$ dollars, (besides your fees for that service,) whereof the said defendant is convicted, as appears to us of record; and that you should have the said money before the judges of our said court at Raleigh, on the first Monday of June, A. D. 1870, then and there to render the same, &c.; and you at that day returned that, by virtue of said writ, you had levied on the following property, to wit:

One tract of land situated on Tryon st., in the city of Charlotte, Mecklenburg Co., N. C., containing 4 acres, more or less, adjoining lands of W. J. Yates and D. H. Hill, upon which is located a large dwelling-house, kitchen, and out-buildings, known as the "home place" of said defendant; one other tract of land, containing 70 acres, more or less, adjoining lands of M. L. Wriston, Mrs. H. B. Williams, and others; also one tract of land, containing 400 acres, more or less, adjoining same lands, and those of Richard Turner, and known as the "Osborne Hannon tract;" and one other tract of land, containing 64 acres,
29 more or less, known as the "Walker tract," adjoining lands of Icehour Griffith & others; all of which lands are situated in the county of Mecklenburg, N. C., on the "main Camden road," about 1¼, 2¼, and 4 miles from Charlotte, respectively.

Levied this 16th day of February, 1870, together with the following personal property belong' to said A. A. N. M. Taylor, to wit: Two mules, four head of cattle, double set of harness, wagon, grindstone, two beds and bedding, wardrobe, p'r andirons, shovel and tongs, clock, 19 chairs, lounge and cover, bureau, 3 tables, crockery, 2 stoves & fixtures, hat-rack, washstand, bowl and pitcher, and sofa, levied this 9th day of April, 1870. Real estate advertised to be sold at the court-house door of said county, on the 10th day of March, 1870. The personal property advertised to be sold at said A. A. N. M. Taylor's residence on the 24th day of May, 1870.

(Signed) S. T. CARROW, *U. S. Marshal.*
By ED. BYRON FULLINGS,
Deputy U. S. Marshal.

I further return that, after said levy and prior to the day of sale, as advertised by me, the sheriff of Mecklenburg County sold the several tracts of land aforesaid, to wit, on the 7th day of May, 1870, under and by virtue of sundry executions in his hands, issued from the State court, some of which executions were of lien prior to the teste of this fi. fa., and others of a lien subsequent thereto; that said sheriff, before selling the first-described tract, caused to be laid off and allotted
30 to the defendant a homestead therein, pursuant to State laws; that, at said sheriff's sale, the first-described tract was bid off by one M. L. Wriston, for the use and benefit of one John C. Burroughs, a brother-in-law of the defendant, at the price of $5,500; the 70-acre tract was bid off by said Wriston, at the price of $3,200; the 400-acre tract was bid off by one J. Y. Bryce, at the price of $2,200; and the 64-acre tract was bid off by Joseph McLaughlin, at the price

of $275.00; that, on the day of sale, as advertised by me, I first put up for sale the house and lot first described, when the defendant Taylor came forward and forbid the sale of his homestead, as laid by the sheriff, declaring substantially, that the decision of the Hon. George W. Brooks, district judge, was considered by some of the most eminent lawyers in the state incorrect, and that the same would be reversed by the Supreme Court of the United States, and that if any one purchased his homestead they would buy a lawsuit, as he should carry the question of the validity of such sale to the Supreme Court, and likewise produced and read to the crowd section 1st, under the head of "Final process," in the rules of this court, page 27; that, thereupon, the said M. L. Wriston came forward and forbid the sale of any portion of said tract not embraced by the homestead; that, thereupon, the said tract was cried, when one S. B. Meacham became the last and highest
31 bidder, at the price of $110, the homestead being valued by appraisers at one thousand dollars, and really worth double that sum; that said Meacham bid as agent for said Burroughs; that, thereupon, I offered for sale the 70-acre tract, when M. L. Wriston came forward and forbid the sale; that, as the defendant Taylor is a married man, it was understood that the sheriff's sale would not pass the dower-interest of his wife; that, thereupon, one Joseph Graham, as agent for said Wriston, became the last and highest bidder, at the price of one dollar; that, thereupon, I offered the 400-acre tract for sale, when the said J. Y. Bryce came forward and forbid the sale thereof, but the same was cried by me, when the said Bryce became the last and highest bidder, at the price of $175.00; that, thereupon, I offered the 64-acre tract for sale, when the said Joseph McLaughlin came forward and forbid the sale thereof, but the same was cried by me, when the said McLaughlin became the last and highest bidder, at the price of $31.00; that the interest of the defendant in the 70-acre tract not sold by the sheriff, was worth, according to my estimate, $500; that the 400-acre tract was worth, subject to a lien of $900.00, at least $3,500, and that the 64-acre tract was worth $500; that the proceeds of the sales of personal property, and the first and second above-described tracts by said sheriff, was more than sufficient to satisfy all the executions in his hands of liens prior to 29th of November, 1869, and
32 the sales thereof were made anterior to his pretended sales of the 400 and 64 acre tracts; that the action of the defendant M. L. Wriston, S. B. Meacham, John C. Burroughs, J. Y. Bryce, and Joseph McLaughlin, as aforesaid, did prevent competition and suppress bidding; that said Wriston and Bryce are men of wealth and influence.

I further return that I received the sums bid, and now hold the same for the parties rightfully entitled thereto.

I sold the personal property levied on, which brought $281.50; retained my fees and commissions, $13.78; paid into office for costs, $42.54, and $68.84 in part of debt and interest, the balance of the $281.50 being applied to the execution in favor of Coughlan, Randall & Co., of the same teste as this. And, on the foregoing facts, I return no sale of the several tracts of land levied on.

(Signed) S. T. CARROW, *U. S. Marshal.*
By ED. BYRON FULLINGS,
Deputy U. S. Marshal.

And it appearing that said real property remains unsold—

Therefore we command you, that you expose to public sale, to the highest bidder for cash, and sell or cause to be sold, the real property

aforesaid, and have you the money arising from the sale before the judges of our said court, at Raleigh, on the last Monday of November next, then and there to render the same to the said plaintiff; and also the further sum of five dollars, costs taxed since the issuing of the said execution, besides your fees for this service.

And if the property aforesaid shall not be sufficient to satisfy the said recovery, we then command you, as we have heretofore com-
33 manded you, that of the goods and chattels, lands and tenements of the said A. A. N. M. Taylor, in your district, you cause to be made the residue thereof, and have you likewise that money before the judges of our said court, on the day and at the place aforesaid, then and there to render the same, &c. And have you then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the first Monday in June, 1870, and in the ninety-fourth year of the independence of the United States.

Issued the 17th day of October, 1870.

[SEAL.] (Signed) N. J. RIDDICK, *Clerk.*

To hand Oct. 17th, 1870. By virtue of the command of the within writ, and one in favor of Coughlan, Randall & Co., I exposed to sale, at the court-house, in the town of Charlotte, in Mecklenburg County, in North Carolina, the real estate specified in the within recited levy on the 26th day of November, A. D. 1870, after due advertisement, when and where James Henderson became the last and highest bidder of all of said lot and tracts of land, (of the first-described, at the sum of two hundred and ten dollars; of the second-described, at the sum of ten dollars; the third-described tract at the sum of one hundred and sixty dollars; and the fourth-described tract, at the sum of ten dollars,) amounting in the aggregate to the sum of three hundred and ninety dollars. Retained my fees and ½ commissions on the amount collected, to wit, $18.15, & paid to office for costs $5, and $144.15, being
34 the proportionate part of the balance due ($343.76) on this venditioni exponas; the remainder of the amount of bids being applied to the venditioni exponas in favor of Coughlan, Randall & Co., of the same teste and lien as this, and then in my hands as per my return thereon.

(Signed) S. T. CARROW, *U. S. Marshal.*
By J. T. CUTHRELL, *Deputy.*"

And at the term of the said court aforesaid, to wit, November term, 1870, this cause coming on to be heard upon the petition, answer, and evidence in the same, and being debated by counsel on both sides, it is considered by the court that the rule be discharged, and that the petitioner pay all costs.

From which judgment the petitioner prays an appeal to the Supreme Court, which is granted.

Bond approved, accepted, and filed. Which said bond is in the following words and figures, to wit:

Supreme Court of the United States.

JOHN C. BURROUGHS, PLAINTIFF,
vs.
SAMUEL T. CARROW, MARSHAL OF THE DISTRICT of North Carolina, defendant.

Know all men by these presents that we, John C. Burroughs, S. P.

Alexander & John L. Brown, of the city of Charlotte, county of
35 Mecklenburg, State of North Carolina, are held and firmly bound unto Samuel T. Carrow, in the sum of two hundred dollars, to be paid to the said Samuel T. Carrow, his executors or administrators; to which payment well & truly to be made, we bind ourselves & each of us jointly & severally, and our & each of our heirs, executors, or administrators, firmly by these presents, sealed with our seals, and dated this twentieth day of December, anno Domini eighteen hundred & seventy.

Whereas the above-named John C. Burroughs hath prayed & obtained an appeal to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of North Carolina:

Now, therefore, the condition of this obligation is such that if the above-named John C. Burroughs shall prosecute his said appeal to effect, and answer all damages & costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force & virtue.

(Signed) J. C. BURROUGHS. [SEAL.]
S. P. ALEXANDER. [SEAL.]
J. L. BROWN. [SEAL.]

Sealed & deliverd in the presence of—
F. W. AHRENS,
U. S. Commissioner.

NORTH CAROLINA,
Mecklenburg County, ss:

Samuel P. Alexander maketh oath, that he has signed the bond of John C. Burroughs in his appeal to the Supreme Court of the
36 United States, in his case against Samuel T. Carrow; that said bond is in the sum of two hundred dollars, and affiant is worth more than that sum over & above the homestead & personal property valuation, & all other his liabilities whatsoever.

(Signed) S. P. ALEXANDER.

Sworn & subscribed to before me this 19th day of Dec'b'r, A. D. 1870.
(Signed) F. W. AHRENS,
U. S. Commissioner.

NORTH CAROLINA,
Mecklenburg County, ss:

John L. Brown maketh oath that he has signed the bond of John C. Burroughs in his appeal to the Supreme Court of the United States, in his case against Samuel T. Carrow; that said bond is in the sum of two hundred dollars, and affiant is worth more than that sum over & above the homestead & personal property valuation, & all *all* other his liabilities whatsoever.

(Signed) J. L. BROWN.

Sworn & subscribed before me this 19th day of Dec'b'r, 1870.
(Signed) F. W. AHRENS,
U. S. Commissioner.

And there is an endorsement on the said foregoing appeal bond, which is in the following words, to wit:

"This bond is adjudged to be sufficient, & is approved & accepted.
(Signed) "G. W. BROOKS, *Dist. Judge.*"

37 I, N. J. Riddick, clerk of the circuit court of the United States of America, in and for the district of North Carolina, do hereby certify that the foregoing is a full, true, and perfect transcript of the record of said court, in the case wherein John C. Burroughs is plaintiff, and Samuel T. Carrow is defendant.

In testimony whereof, I hereunto subscribe my name, and affix the seal of said court, at office, in Raleigh, this 24th day of October, anno' Domini 1871. N. J. RIDDICK, *Clerk.*

(Indorsement on cover:) No. 447. John C. Burroughs, appellant, vs. Samuel T. Carrow, marshal, &c. N. Carolina C. C. U. S. Filed 1st December, 1871.

REC. 447—2

IN THE

Supreme Court of the United States.

No. 447.

JOHN C. BURROUGHS, Appellant,

against

SAMUEL T. CARROW, Marshal, etc.

Brief of Appellant.

W. A. GRAHAM,
H. W. GUION,
Attorneys and Counsel.

IN THE

Supreme Court of the United States.

—o—

JOHN C. BURROUGHS, APPELLANT,
vs.
SAMUEL T. CARROW, MARSHAL, &c.
} LAW. No. 447.

—o—

Appeal from the Circuit Court of the United States for the District of North Carolina.

—o—

THE ABSTRACT.

This was an application by appellant to the Circuit Court for a Rule upon the appellee as marshal, to show cause why he should not make a good and sufficient deed to appellant for a lot sold by him as marshal, under *fi. fas* issued from said court, and which were purchased by appellant as the highest bidder, and for which he paid to said marshal the amount of his bid.

The plaintiff in his petition alleged that two several judgments were rendered in said Circuit Court, at November term, 1869, against one A. A. N. M. Taylor, of the city of Charlotte, county of Mecklenburg; that *fi. fas* were issued thereon, and came to the hands of the deputy marshal in said county, one Ed. Byron Fullings; that said executions were levied upon a lot in the city of Charlotte—described particularly in the petition,—and after due advertisement according to law, the same was exposed to sale, and the petitioner became the purchaser thereof, being the highest bidder, at the sum of one hundred and ten dollars; that petitioner paid the amount bid, and took the deputy marshal's receipt therefor, in form as follows:

"$110.00. Received of John C. Burroughs one hundred and ten dollars, as purchase money for the residence of A. A. N. M. Taylor, including right of dower and homestead, situated in the city of Charlotte, N. C., this day sold by me, by public auction, as the property of A. A. N. M. Taylor, to satisfy executions in my hands from the U. S. Circuit Court.

"This receipt to hold and remain in full force until the execution and delivery of a deed for said property.

"Charlotte, N. C., May 10th, 1870.

"ED. BYRON FULLINGS,

"Witness: T. W. DEWEY. *U. S. Deputy Marshal.*"

That the purchaser applied, at the ensuing June term of the Circuit Court, to the marshal to execute a deed for the property purchased by him, and the same was refused; that the appellant's counsel applied to the court for a Rule upon said marshal, to show cause why he should not be compelled to make a deed according to law and the rules of said Circuit Court; but before the requisite affidavits could be obtained, the court adjourned.

Petitioner further alleged, that after the court adjourned, he prepared a proper deed for the lot purchased by him and tendered the same to the marshal to be executed by him, and he refused to do so.

Petitioner also alleged, that prior to the marshal's sale, by virtue of sundry executions issued from the Superior Court of Mecklenburg county, the sheriff of said county had levied upon and sold according to law, the interest of said Taylor in the house and lot in controversy, and petitioner became the purchaser at the price of $5,500, and that he bid at the marshal's sale to perfect the title acquired from the sheriff.

The Judge at Chambers, on the 14th day of November, 1870, granted the Rule, and made it returnable before the Circuit Court at Raleigh, on the 14th of December, 1870.

The defendant by counsel appeared, and, for cause against the Rule, responded, and to his answer attached his returns as marshal. From which it appears, that from the November term, 1869, of the Circuit Court of the United States, two *fi. fas* were issued to him, against the said A. A. N. M. Taylor—one in favor of Coughlan, Randall & Co., for $2,681.25, was placed in the hands of his deputy, Ed. Byron Fullings, on the 8th day of January, 1870, and the other in favor of James Forsythe for $1,953.75, was placed in the hands of said deputy on the 24th of January, 1870.

That prior to any sale by said deputy, the sheriff of Mecklenburg county by virtue of sundry writs of *fieri facias* to him issued from the Superior Court of that county, against the said A. A. N. M. Taylor, had levied on the real estate of said Taylor, and on the 7th day of May, 1870, had sold the same as follows, to-wit: As to the house and lot in controversy, he had first laid off a part of the same as a homestead for said Taylor as exempt from execution, pursuant to the laws of the State, and sold the residue of said lot at auction to one M. L. Wriston, who bid for J. C. Burroughs, the appellant in this case and the brother-in-law of said Taylor, at $5,500. A tract of 70 acres was sold to said M. L. Wriston at $3,200; a 400 acre tract was sold to one J. Y. Bryce at $2,200, and a tract of 64 acres was sold to one McLaughlin at $275.

That the deputy marshal, on the 9th day of April, 1870, levied upon the said property, and on the 10th of May, 1870, offered the same at public auction, having first duly advertised the same according to law.

What occurred at said sale, appears from the marshal's return on the executions, as follows:

"That on the day of the sale, as advertised by me, I first put up for sale the house and lot first described, (the property in controversy,) when the defendant, Taylor, came forward and forbid the sale of his homestead, as laid off by the sheriff, declaring, substantially, that the decision of the Hon. George W. Brooks, District Judge, was considered, by some of the most eminent lawyers in the State, incorrect, and that the same would be reversed by the Supreme Court of the United States, and that if any one purchased his homestead, they would buy a lawsuit, as he should carry the question of the validity of such sale to the Supreme Court, and likewise produced and read to the crowd Section 1, under the head of "Final Process" in the Rules of this Court, page 27.—(The rule referred to is as follows: "*1.* Final process upon judgments in this court shall be the *capias ad satisfaciendum*, and the writs of *fieri facias* and *venditioni exponas*, to be issued in like cases, and to have the like effect and operation and to be returned in like manner as in the courts of the State, except where such effect and operation may conflict with an act of Congress or these rules; but no such process shall be served on Sunday.")

"That thereupon the said M. L. Wriston came forward and forbid the sale of any portion of the lot not embraced by the homestead. That thereupon the said tract was cried, when one S. B. Meacham became the last and highest bidder, at the price of $110. The homestead being valued by appraisers at $1,000, and really worth double that sum.

That said Meacham bid as agent for said Burroughs. That thereupon, I offered for sale the 70 acre tract, when M. L. Wriston came forward and forbid the sale. That as the defendant, Taylor, is a married man, it was understood that the sheriff's sale would not pass the dower interest of his wife. That, thereupon one Joseph Graham, as agent for said Wriston became the last and bigest bidder at the price of $1. That, thereupon, I offered the 400 acre tract for sale, when the said J. Y. Bryce came forward and forbid the sale thereof, but the same was cried by me, when the said Bryce became the last and highest bidder at the price of $125. That, Thereupon I offered the 64 acre tract for sale, when the said Joseph McLaughlin came forward and forbid the sale, but the same was cried by me, when the said McLaughlin became the last and highest bidder at the price of $31.

"That the interest of the defendant in the 70 acre tract not sold by the sheriff was worth according to my estimate $500. That the 400 acre tract was worth subject to a lien of $900 at least $3,500, and that the 64 acre tract was worth $500.

"That the proceeds of the sales of the personal property and the first and second above described tracts by said sheriff, were more than sufficient to satisfy all the executions in his hands of liens prior to 29th of November, 1869, and the sales thereof were made anterior to his pretended sales of the 400 and 64 acre tracts. That the action of the defendant, M. L. Wriston, S. B. Meacham, J. C. Burroughs, J. Y. Bryce and Joseph McLaughlin, as aforesaid, did prevent competition and suppress bidding. That Wriston and Bryce are men of wealth and influence.

"I further return, that I received the sums bid, and now hold the same for the parties rightfully entitled thereto. And on the foregoing facts, I return no sale of the several tracts of land levied on.

(Signed) "S. T. CARROW, *U. S. Marshal*,
by Ed. Byron Fullings, *Deputy U. S. Marshal*."

The defendant in his answer further says:

"That it was evident to respondent, from the facts stated to him by his deputy, that the petitioner, Meacham, Taylor, Bryce, Wriston and McLaughlin had combined to stifle competition at said sale, and that the whole programme enacted as set forth in said return was the result of such combination; that the said sale was unfair, as the conduct of these bidders, several of them being men of wealth and influence was calculated and, in the judgment of himself as well as said deputy, had the effect to prevent the property not only from bringing anything like a fair price, but to cause it to be knocked down at the most enormous sacrifice; that, in view of these facts, his said deputy made return of the facts, and thereupon I made the return of no sale."

That writs of *venditioni exponas* were issued to him upon the levies aforesaid, and after advertisement he exposed

the said tracts to public sale on the 26th of November, 1870, when one James Henderson became the purchaser thereof at the following prices, viz: For the lot in controversy, $210; the 70 acre tract, $10; the 400 acre tract, $160; the 64 acre tract at $10. That he received the said money from said Henderson and made him a deed, before this Rule was served on him or notice of the proceeding had; that this latter sale was conducted by a deputy, J. T. Cuthrell. That the several sums bid at the sale of his deputy Fullings are held by him to be delivered to the rightful owners thereof on demand, and that he is now and always has been ready to pay over the same to the parties entitled thereto. That the lot in controversy is worth $15,000, (page 4 of transcript.)

The defendant appended to his answer an affidavit, as follows:

"S. T. Carrow, being duly sworn, declares he has no personal knowledge of the facts herein set forth, but that from information and belief, he is satisfied that the facts stated in the foregoing answer are true."

THE JUDGMENT BELOW.

"And at the term of the said court aforesaid—to-wit, November Term, 1870,—this cause coming on to be heard upon the petition, answer and evidence in the same, and being debated by counsel on both sides, it is considered by the court that the Rule be discharged, and that the petitioner pay all costs.

ASSIGNMENT OF ERRORS.

And the said John C. Burroughs, by W. A. Graham and H. W. Guion, his attorneys, comes and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to-wit: that all the facts, conceding their verity, set forth in the defendant's answer and returns, do not constitute good and sufficient cause in law, against the Rule granted to plaintiff; and that there is manifest error in this, to-wit: that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said Samuel T. Carrow, against the said John C. Burroughs, whereas by the law of the land the said judgment ought to have been given for the said John C. Burroughs against the said Samuel T. Carrow. And the said John C. Burroughs prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record aforesaid, may be reversed, an-

nulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

ARGUMENT.

What acts constitute in law *a sale*, are explicitly declared by this court, in the cases of Blossom vs. Railroad Company, reported in 1 Wall. 655, and again in 3 Wall. 196. The law established in them is:

"That the seller may withdraw the goods, or the bidder may retract his bid at any time before they are struck off, and the reason assigned for the rule is, that so long as the final consent of both parties is not signified by the *blow of the hammer*, there is no mutual agreement to a definite proposition. But as soon as the hammer is struck down the bargain is considered as concluded, and the seller has no right afterwards to accept a higher bid, nor the buyer to withdraw from the contract. Same rules prevail upon a sale under common law process as in other cases of sales at public auction, so far as respects the question now before the court."—(3 Wall. 206.)

The plaintiff insists that at a judicial sale, conducted by the defendant as an officer of the Circuit Court, he became the last and highest bidder, and his bid was accepted by the defendant, and that all the acts and facts, necessary to constitute a valid and legal sale are fully admitted by the defendant in his answer.

The property having been struck off to the plaintiff, he thereby subjected himself to the jurisdiction of the court, and to punishment, if he refused to comply with the terms of sale; and he acquired the corresponding right to appear before the court, seek its protection, and obtain an order for specific performance against the Marshal, if he refused to comply with the terms on his part.—(Blossom vs. Railroad, *ut supra;* Yates, *ex parte*, 6 Jones' Eq. (N. C.) 216 and 306; Grier vs. Yontz, 5 Jones' Law, 372.)

The marshal is invested with discretion in his conduct of sales, and may adjourn the same if he deem proper. In the present case, all the acts cited by him as proof, satisfactory to him—of fraud, were committed before the sale, yet notwithstanding he persisted in crying the sale, knocked off the property to the plaintiff, received his money and in writing acknowledged the duty as obligatory upon him to make a good and sufficient deed for the premises.

By the Statute of North Carolina, passed in 1848 and re-enacted in the Revised Code, chap. 45, sec. 30, the plain-

tiff was entitled to his deed. The section referred to recites:

"SEC. 30. Sheriffs and other officers selling lands or slaves, by authority of any execution or process, shall upon payment of the price, prepare, execute and deliver to the purchaser, a deed for the property purchased. *Provided*, that the purchaser of land shall furnish the officer with a description of the land."

The Circuit Court of the United States for the District of North Carolina, in its General Rules of pleading and practice adopted in 1858 and still in force, under the head of "*Final Process*," section 13, page 30, has prescribed as follows:

"Where a sale shall be made by the marshal of any land or interest therein, or any slave or slaves by authority of any execution or process, he shall upon the payment of the price, execute and deliver to the purchaser a proper deed therefor, when presented by the purchaser, or shall prepare, execute and deliver such deed, when desired by the purchaser upon being paid his fee for such service."

The law of the State, adopted as the law of the Circuit Court, so clearly announces the marshal's duty as to the execution of a deed, that no controversy on this point is made in the answer; and the defendant does not deny the allegation of the plaintiff, that he had made a demand for the deed.

The marshal resists plaintiff's demand on the ground, that the facts, set forth in his return, were conclusive proof to himself and his deputy, that fraud and the combination of parties had stifled competition at the sale, and he therefore decided that there was no sale, and he so returned.

To this plaintiff replies, that if in fact there were fraud and combination at the sale, the marshal was not invested with any judicial authority, to pass upon the facts and declare the sale void and treat it so. He should at least have simply stated the facts, to the court, and afforded the purchaser an opportunity of being heard in the proper forum in defence of his rights. (The cases above cited.)

What constitutes a sale in law is purely a question of law for the court to decide—and what constitutes fraud or conspiracy, is sometimes a mixed question of law and fact "is never exclusively a question of fact; that is in the sense of leaving it to the uncertain judgment of Jurors." "Fraud is matter of law. It is stated in the books to be a conclusion of law, upon facts and intents found or admitted."—(Gregory vs. Perkins, 4 Dev. Law, 53; Foster vs. Woodfin, 11 Ire. Law, 344.)

Even if the marshal were invested with judicial powers generally, yet he would be precluded from exercising the same in this particular instance. So jealous is the law, in the administration of justice that where a judge has an interest, neither he nor his deputy can determine the cause or sit in court, and if he does, a prohibition lies. (Brookes and the Earl of Rivers; Hard, 503.)

Judgment given by a judge who is a party in a suit with another and so entered of record is error, although several other judges sit there and give judgment for the judge who is a party.—(Jenk. 90, pl. 74.)

That the marshal and his deputy are both deeply interested in the question, as to the validity of the sale, is manifest from the record. Two executions from the Circuit Court aggregating $4,500, were placed by the marshal in the hands of his deputy Fullings in the month of January. They were not levied until the 9th day of April, and the necessary advertisement deferred the sale to the 10th day May. In the meantime, the sheriff of Mecklenburg county under executions issued from the State Court, levies upon, in advance of the marshal, advertises and sells, all or nearly all the property of the defendant, Taylor. For such gross negligence and delay, the marshal and his deputy became liable for the amount of the executions in their hands.

Here is so manifest an interest as would certainly disqualify both marshal and deputy from rendering any judgment on the question of sale or no sale, and further discloses why he has so elaborately and cunningly framed his returns and answers with the hope of exciting in the mind, suspicions of fraud and combination. He seems to have been diligent in seeking for, and stating, everything which would give color to the position he had taken; and appears to have been deeply impressed with the facts, that Burroughs and Taylor were brothers-in-law—that Wriston and Bryce were men of wealth and influence—and that by their forbidding, each one, the sale of his own property, they had so effectually stifled competition, as to subject the lot in controversy, worth $15,000, to the most enormous sacrifice. Upon the re-sale of the property he is totally silent as to what took place; whether there was any forbidding of the sale; whether the purchaser Henderson was wealthy or influential or not; whether as surety of himself or deputy or otherwise, he, Henderson, was not interested in getting a deed to the property and wholly fails to observe, how enor-

mous was the sacrifice of the valuable property, sold to said Henderson at the low price of $210. It is also to be remarked with what extreme haste this second sale was conducted. The rule to show cause was granted by the Judge on the 14th of November to be heard on the 14th of December. The sale took place on the 26th of November, and he received the purchase money and executed to Henderson a deed for the property, "before this rule was served *on me* or notice of the proceeding had"—exhibiting a cautious denial, by way of negative pregnant, as to himself, but not denying that his deputy Cuthrell, who conducted the sale in Mecklenburg, did not have full notice of the rule, at and before the sale and conveyance of the property to said Henderson. This singular conduct of the marshal awakens at least the suspicion, that he, his deputy and Henderson are the true conspirators in this controversy and they purposed through Henderson's title to wrest from the wealthy and influential gentlemen and Taylor's relatives, who had already paid heavily for their purchases, a sufficient amount to repair the losses sustained or incurred by their negligence. If such is not the actual fact in this particular case, yet an affirmance of the marshal's right, at his own will and pleasure to vacate a legal sale, would open a wide door to frauds in public officers, render judicial sales under United States process contemptible in the eyes of the public, and greatly impair the efficacy of final process, as a means of enforcing the judgments of the courts.

This view of the case seems hardly worthy of consideration, as the facts cited by the marshal as proof of fraud and combination do not in the slightest degree justify his own conclusion and are wholly insufficient to sustain the judgment in the court below.

If Wriston and Bryce were men of wealth and influence, they were not on that account precluded from enjoying the right conceded to the poor and obscure of looking after their own property. If Burroughs were the brother-in-law of Taylor, his bidding for the property in no way served to stifle competition; and inadequacy of consideration is no objection to a sale under execution if legally and fairly made.—(Erwin vs. Parham, 12 How. 197; Cooper vs. Galbraith, 3 W. C. C., 546.

The only allegations as to the fairness of the sale are, that when the several tracts were offered, the respective parties

who had purchased them at the sheriff's sale stepped forward, gave notice of their several titles and forbade the sale by the marshal. With respect to the lot in controversy, the sheriff, pursuant to the State Constitution and laws, had laid off a portion of it to the defendant, Taylor, as his homestead: the rest of the lot had been sold by the sheriff and the appellant, Burroughs, had purchased it. The sale of the homestead was and is prohibited by a statute, chap. 147, of the Acts of 1868–69. The only part of which relative to this case is the first section, as follows:

"Whenever the real estate of any resident of this State shall be levied on by virtue of any execution or other final process obtained on any debt, such portion thereof as may be occupied by the owner as an actual homestead and which he may then regard as such, including the dwelling and buildings thereon, shall be exempt from such levy, except under an execution or other final process issued for the collection of a debt, contracted, 1. For purchase of said homestead; 2. For such work and labor done for the owner of the homestead as may constitute a laborer's lien; 3. For such labor done on the premises as may constitute a mechanic's lien; 4. For taxes accruing on said homestead."

Under this claim, Taylor protested against the sale of his homestead, and declared that he would defend his title to the last extremity.

Burroughs then, through his agent, (so known to be, as the marshal reports,) forbade the re-sale of the residue of the lot which he had purchased at sheriff's sale.

These facts, the marshal says, reported to him by his deputy, were sufficient to satisfy him that there was fraud and combination, and he accordingly adjudged that there was *no sale*.

Such annunciations could not have had the effect of stifling competition; for, in North Carolina, the practice of giving notice of title and forbidding the sale has existed for very many years. This case was not a novelty, calculated to impress the bystanders with sudden fear. Previous to a sale, it is the natural custom for those proposing to purchase, to make inquiries as to the title, and satisfy themselves as to the weight due to the veto of any adverse claimant. This course has not only been deemed fair by the courts, but it has been in several cases adjudged that the silence of the claimant is of itself such a fraud upon the purchaser, as will deprive such claimant of his right. A few of the cases will be referred to:

Markham vs. Shannonhouse, 4 Iredell's Equity, 411.—"A

purchased at execution sale a tract of land belonging to B. Afterwards, the same tract of land was levied upon and set up for sale under another execution against B, posterior in lien. A forbade the sale, then bid for the land, and it was struck off to him. *Held*, that in so doing A was guilty of no fraud upon B. A had a right to forbid the sale of his own land and then purchase it, if he chose. In so doing, he did no injury to the complainants, and committed no fraud upon them."

These facts are identical with the present case.

"If one stands by, or allows another to buy property, to which he has the title, he will not, on account of this fraud, be permitted in a court of equity to assert his title."—(Devereux vs. Burgwyn, 5 Iredell's Equity, 355.)

Sasser vs. Jones, 3 Iredell's Equity, 19, is an instance of a right lost in this way.

Also the case of Mason vs. Williams, 66 N. C. Rep., 566.

Tilghman vs. West, 8 Ire. Eq., 183, (N. C.)

Blackwood vs. Jones, 4 Jones' Eq., 54, (N. C.)

Albea vs. Griffin, 2 Dev. and Battle's Eq., 9, (N. C.)

By the Constitution of the State, Article 4, Section 1, the distinctions between actions at law and suits in equity are abolished.

Inasmuch, then, as the acts of the marshal, as reported by himself, do amount to a legal sale of the property, and the facts cited by him (and we are to assume that he has cited every thing that he could, favorable to his own position) do not afford any proof of fraud and combination, but on the contrary, are recognized by the courts as not only just, fair and lawful, and under the circumstances of this case, positive duties owing to the bystanders at the sale, the defendant has shown no sufficient cause in law against the rule, and accordingly the judgment should have been for the plaintiff.

If the first sale were valid, no subsequent sale of the same property under the same judgment would be lawful, and all process issued for such purpose would be beyond the power of the court. A *fieri facias* vests the property in goods and chattels in the officer upon his seizure of them: but as to lands, it only confers a *power of sale;* and it is familiar learning that the execution of a power forever after extinguishes it.

In Smith vs. Fore, 10 Iredell Law, 38, the court held—"That the lessor is a purchaser at sheriff's sale under a *venditioni exponas*, issuing upon a constable's levy. The land had before been sold under a *venditioni exponas*, issuing

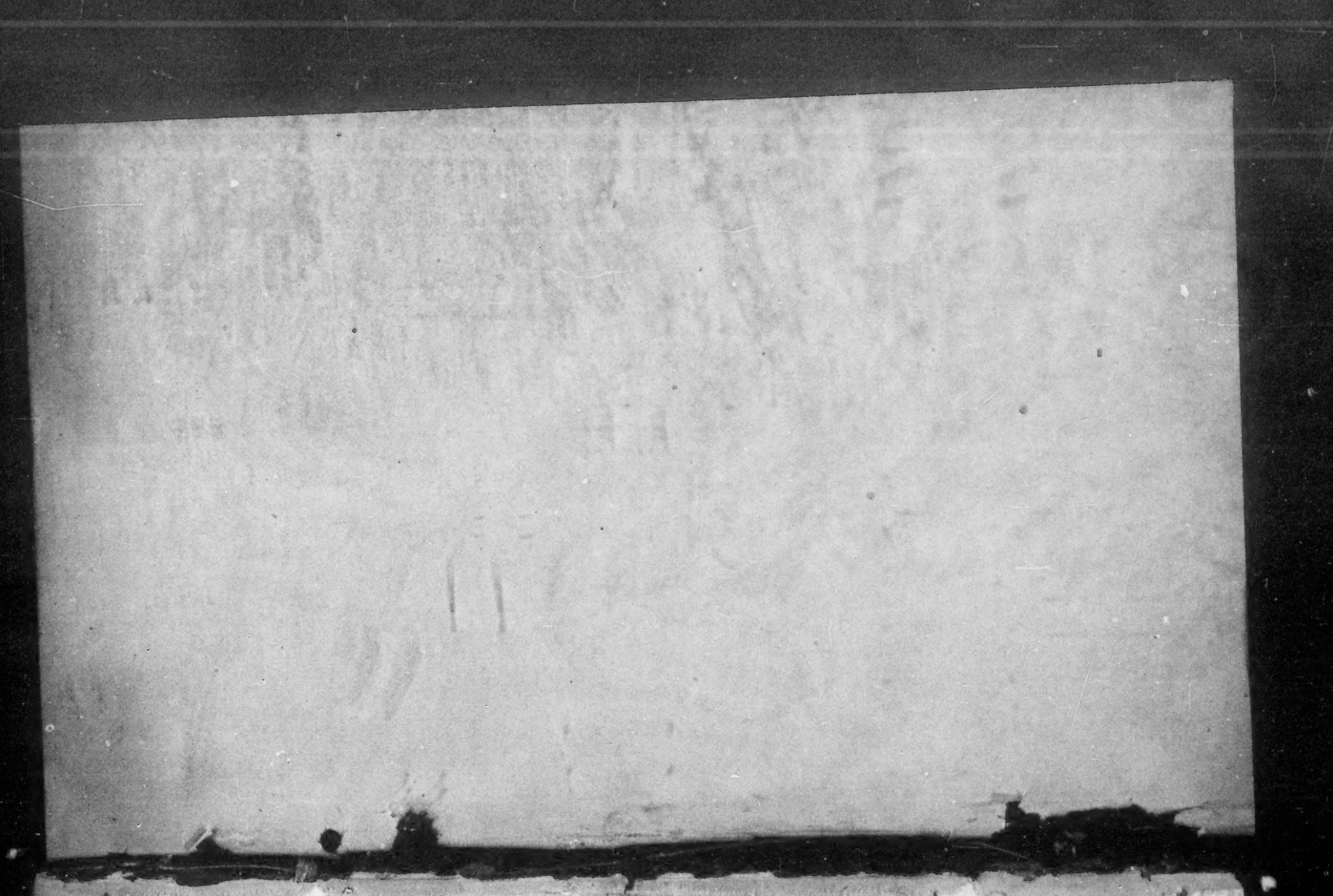
upon the same levy, and one Davis had become the purchaser and taken the sheriff's deed. This rendered the levy *functus officio* and there was no authority to issue the second *venditioni exponas*, under which the lessor purchased."

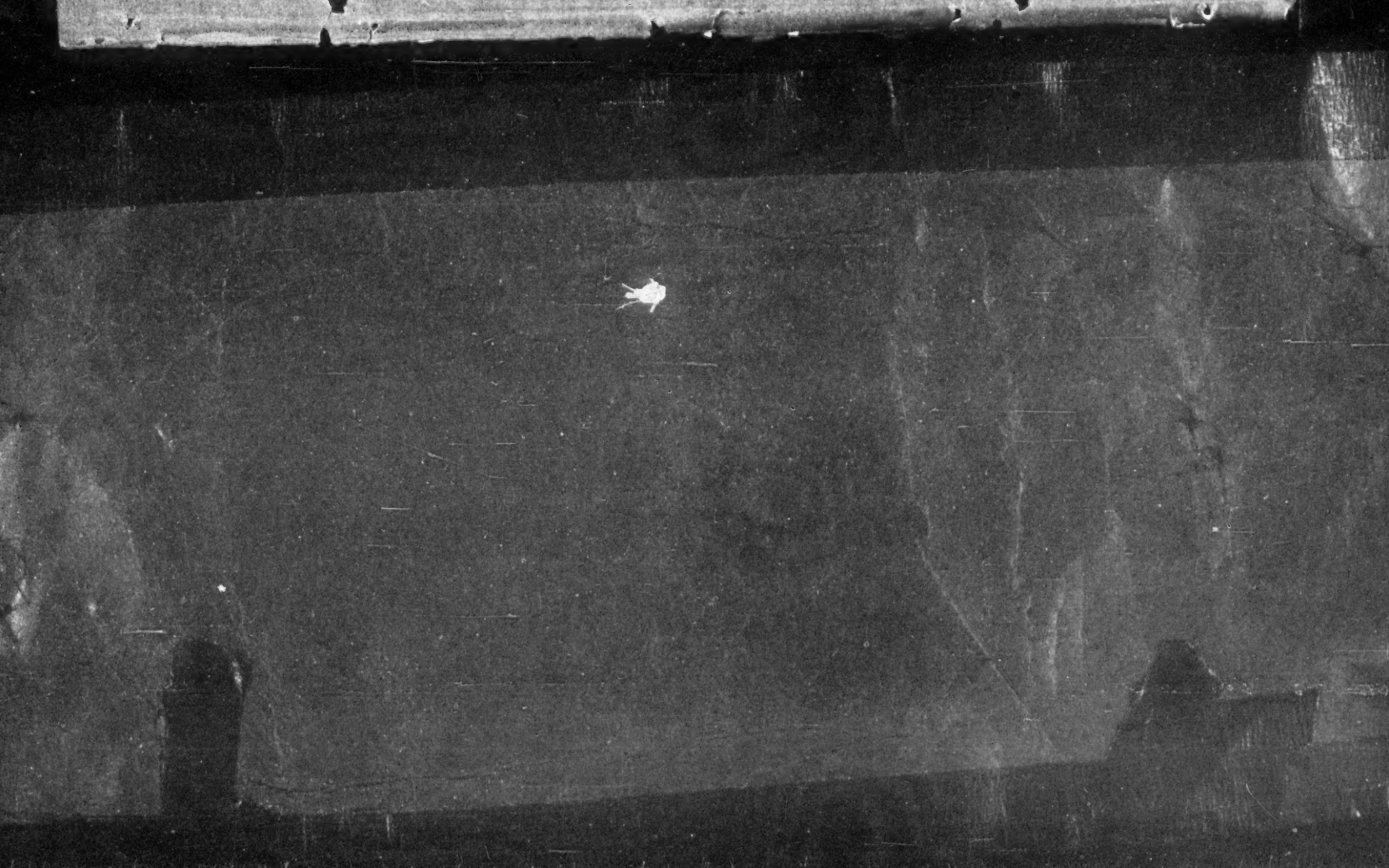
This rule is the proper method of proceeding to enforce the marshal to execute a deed to the appellant.

"A court of equity will not entertain a bill by a purchaser of land at execution sale, against the sheriff to compel him to convey. The purchaser has a plain, adequate and speedy remedy at law, by putting the sheriff under a rule."—(Patrick vs. Carr, 1 Winston's Law and Eq., (N. C.,) 87.

The rule was obtained before the second sale of the property, and Henderson had not then become a purchaser. If the appellant receives a deed from the marshal, it will have a retrospective operation to the day of sale.—(Dobson vs. Murphy, 1 Dev. and Battle, 586; Festerman vs. Poe, 2 Dev. and Battle, 103.)

W. A. GRAHAM,
H. W. GUION, } Attorneys.





In the Supreme Court of the United States.

DECEMBER TERM, 1872.

JOHN C. BURROUGHS, *Appellant,*
vs.
SAMUEL T. CARROW, *Marshal, &c.* } No. 210.

Appeal from the Circuit Court of the United States for the district of North Carolina.

BRIEF FOR THE DEFENDANT.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

JOHN C. BURROUGHS, *Appellant*,
vs.
SAMUEL T. CARROW, *Marshal, &c.* } No. 210.

Appeal from the Circuit Court of the United States for the district of North Carolina.

BRIEF FOR THE DEFENDANT.

This was a motion (by one who alleged that he was purchaser at an execution sale, made in an action at law by a deputy of the defendant) for a rule upon the defendant to show cause why he should not execute a deed to him. The defendant answered, that the land was purchased at such sale by another person, and also set forth that the purchase was made under circumstances which rendered it *a fraud* upon the marshal.

The court discharged the rule. The plaintiff *appealed.*

1. This motion partakes of the character of the proceeding in which it was made, and is consequently a motion *at law.* Therefore, the proper method of bringing up the matter complained of was a *writ of error.*

2. The proceeding below looked to an attachment for contempt. (Steph. Comm., 4, pp. 1 and 426; Act

of 1831, c. 99, s. 1.) Whether a court will grant *that*, is a matter of *discretion*. (Bacon Abr. Attachment; Com. Dig., 1, 575.) This appeal brings up a "question of *equity*, arising out of the rules and practice of the court," as was said in a similar case: Morsell *vs.* Hall, 13 How., 212. Therefore, there can be no *error* in the way it was determined.

3. Where such a rule is refused, (whatever be true where it is granted, and its fruits obtained,) it is no *final* judgment; for the plaintiff may still bring his action, or file a bill for specific performance; which, especially the latter, is the better form of remedy in cases of dispute about facts. Bacon, *above;* State *vs.* Sheriff, &c., Constitutional Reports, (S. C.,) 145.

4. Upon the merits, the court below adjudged correctly. For in this sort of proceeding, the defendant *tries himself*, (King *vs.* Almon, Wilmot's Opinions, at p. 257; Steph. Comm., 4, 426;) and *here*, taking the answer to be true, not *Burroughs*, but *Meacham* was the purchaser; not to say, that it is also thereby a case of fraud upon the marshal.

S. F. PHILLIPS,
Attorney for defendant.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~485~~ 199

JONATHAN M. DAIR, WILLIAM F. SAUKS, JAMES DAIR, AND WILLIAM W. DAVISON, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED NOVEMBER 29, 1871.